

CHAPTER 4

DRUGS

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4.1 GENERALLY

Utah provides for two crimes relating to drugged driving, Driving Under the Influence and Driving with a Measurable Amount of a Controlled Substance or its Metabolite in the Body. The DUI offense applies regardless of whether the substance is legal or illegal and may apply even to over-the-counter medications. Driving with a Measurable Amount applies only to controlled substances for which the suspect does not have a prescription.

4.2 DUI

Although it has already been discussed in Chapter 1, the relevant portion of the DUI statute relating to drugs is as follows:

41-6a-502. Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration.

(1) A person may not operate or be in actual physical control of a vehicle within this state if the person:

* * *

(b) is under the influence of alcohol, **any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle;**

emphasis added.

4.2.1 DEFENSE NOT AVAILABLE

Pursuant to 41-6a-504, the fact that a person charged with violating Section 41-6a-502 is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating Section 41-6a-502.

This provision is the same that is provided under alcohol DUI prosecutions. Essentially, if a suspect has a valid prescription for a controlled substance, the prosecutor must prove impairment through the use of SFSTs, blood or urine tests, driving pattern, or other relevant evidence.

4.3 DRIVING WITH A MEASURABLE AMOUNT

41-6a-517. Driving with any measurable controlled substance in the body

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(2) In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

Note that, as in a DUI prosecution, DWMA does *not* require that the suspect be operating a vehicle on a highway or public property, but applies anywhere in the state. In other words, a positive test for marijuana while operating a riding lawn mower in his back yard would subject a person to prosecution under this section.

4.3.1 PENALTIES

Driving with a measurable amount is, similar to DUI, a Class B Misdemeanor. The statute does not provide the minimum mandatory sentencing requirements to the level as it does for DUI; however, DWMA

does count as a prior conviction for purposes of enhancement under the felony DUI provisions of Utah Code Ann. §41-6a-503 (2).

4.3.2 DEFENSES

Pursuant to 41-6a-517 (3):

It is an affirmative defense to prosecution under this section that the controlled substance was:

- (a) involuntarily ingested by the accused;
- (b) prescribed by a practitioner for use by the accused; or
- (c) otherwise legally ingested.

4.3.3 LESSER INCLUDED OFFENSE

Driving with a measurable amount can, under certain circumstances be considered a lesser included offense of DUI. If the charged offense alleged DUI for drugs or illegally ingested substances, DWMA is a potential lesser included offense. See *State v. Hechtle*, 89 P.3d 185 (Ut. Ct. App 2004).

4.4 DRUG RECOGNITION EXAM PROCEDURES

The Drug Recognition Exam (DRE) consists of , appropriately, twelve steps:

1. The Breath Alcohol Concentration
2. Interview of the Arresting Officer
3. Preliminary Examination
 - includes the first of three pulses taken throughout the examination
4. Eye Examinations
5. Divided Attention Tests
6. Vital Signs Examinations
 - includes the second pulse
7. Darkroom examinations of pupil size
 - includes an examination of the nasal and oral cavities
8. Muscle Tone

9. Examination of Injection Sites
 - includes the third pulse
10. Statements, Interrogation
11. Opinion
12. Toxicology: obtaining a specimen and subsequent analysis

4.4.1 INDICATORS CONSISTENT WITH DRUG CATEGORIES

The charts on the following pages outline the physiological signs which are consistent with drug use.

MAJOR INDICATORS	CNS DEPRESSANTS	CNS STIMULANTS	HALLUCINOGENS	PCP	NARCOTIC ANALGESICS	INHALANTS	CANNABIS
Horizontal Gaze Nystagmus	Present	Not Present	Not Present	Present	Not Present	Present	Not Present
Vertical Nystagmus	Possibly Present	Not Present	Not Present	Possibly Present	Not Present	Possibly Present	Not Present
Lack of Convergence	Present	Not Present	Not Present	Present	Not present	Present	Present
Pupil Size	Within the Normal Range(1)	Dilated	Dilated	Within the Normal Range	Constricted	Depends on Substance (4)	Within Normal or Dilated (6)
Reaction to Light	Slowed	Slowed	Near Normal (3)	Near Normal	Little or No Visible Reaction	Above Normal	Near Normal
Pulse Rate	Below Normal (2)	Above Normal	Above Normal	Above Normal	Below Normal	Depends on Substance	Above Normal
Blood Pressure	Below Normal	Above Normal	Above Normal	Above Normal	Below Normal	Depends on Substance (5)	Above Normal
Body Temperature	Within the Normal Range	Above Normal	Above Normal	Above Normal	Below Normal	Depends on Substance	Within the Normal Range

Footnote:

These indicators are those most consistent with the category; keep in mind that there may be variations due to individual reaction, dose taken and drug interactions.

1. SOMA, Quaaludes usually dilate pupils.
2. Quaaludes and ETOH may elevate
3. Certain psychedelic amphetamines cause slowing
4. Normal but may be dilated
5. Down with anesthetic gases, up with volatile solvents and aerosols.
6. Pupil size possibly normal

MAJOR INDICATORS	CNS DEPRESSANTS	CNS STIMULANTS	HALLUCINOGENS	PCP	NARCOTIC ANALGESICS	INHALANTS	CANNABIS
GENERAL INDICATORS	Uncoordinated Disoriented Sluggish Thick, slurred speech Drunk-like behavior Gait ataxia Drowsiness Droopy eyes Fumbling <u>*Note:</u> With Methaqualone, pulse will be elevated and body tremors will be evident. Alcohol and Quaaludes elevate pulse. Soma and Quaaludes dilate pupils.	Restlessness Body tremors Excited Euphoric Talkative Exaggerated reflexes Anxiety Grinding teeth (bruxism) Redness to nasal area Runny nose Loss of appetite Insomnia Increased alertness Dry mouth Irritability	Dazed appearance Body tremors Synesthesia Hallucinations Paranoia Uncoordinated Nausea Disoriented Difficulty in speech Perspiring Poor perception of time & distance Memory loss Disorientation Flashbacks <u>Note:</u> With LSD, piloerection may be observed (goose bumps, hair standing on end)	Perspiring Warm to the touch Blank stare Very early angle of HGN onset Difficulty in speech Incomplete verbal responses Repetitive speech Increased pain threshold Cyclic behavior Confused agitated Hallucinations Possibly violent & combative Chemical odor "Moon walking"	Droopy eyelids ("ptosis") "On the nod" Drowsiness Depressed reflexes Low, raspy, slow speech Dry mouth Facial itching Euphoria Fresh puncture marks Nausea Track marks <u>Note:</u> Tolerant users exhibit relatively little psychomotor impairment.	Residue of substance around nose & mouth Odor of substance Possible nausea Slurred speech Disorientation Confusion Bloodshot, watery eyes Lack of muscle control Flushed face Non-communicative Intense headaches <u>**Note:</u> Anesthetic gases cause below normal blood pressure; volatile solvents and aerosols cause above normal blood pressure	Marked reddening of conjunctiva Odor of Marijuana Marijuana debris in mouth Body tremors Eyelid tremors Relaxed inhibitions Increased appetite Impaired perception of time & distance Disorientation Possible paranoia
DURATION OF EFFECTS	Barbiturates: 1-16 hours Tranquilizers: 4-8 hours Methaqualone: 4-8 hours	Cocaine: 5-90 minutes Amphetamines: 4-8 hours Methamphetamine: 12 hours	Duration varies widely from one hallucinogen to another.	Onset: 1-5 minutes Peak Effects: 15-30 minutes Exhibits effects up to 4-6 hours	Heroin: 4-6 hours Methadone: Up to 24 hours Others: Vary	6-8 hours for most volatile solvents Anesthetic gases and aerosols - very short duration.	2-3 hours - exhibits effects (Impairment may last up to 24 hours, without awareness of effects.)
USUAL METHODS OF ADMINISTRATION	Oral Injected (occasionally)	Insufflation (snorting) Smoked Injected Oral	Oral Insufflation Smoked Injected Transdermal	Smoked Oral Insufflation Injected Eye drops	Injected Oral Smoked Insufflated	Insufflated (Historically, have been taken orally.)	Smoked Oral
OVERDOSE SIGNS	Shallow breathing Cold, clammy skin Pupils dilated Rapid, weak pulse Coma	Agitation Increased body temperature Hallucinations Convulsions	Long intense "trip"	Long intense "trip"	Slow, shallow breathing Clammy skin Coma Convulsion	Coma	Fatigue Paranoia

